

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NO. 1:21-MC-019-MR-DCK**

DAVID OPPENHEIMER,

Plaintiff,

v.

**MICHAEL SCARAFILE, PATRICIA
SCARAFILE, SHELIA ROMANOSKY, and
O'SHAUGHNESSY REAL ESTATE INC,**

Defendants.

ORDER

THIS MATTER IS BEFORE THE COURT on “Defendants’ First Motion To Compel Non-Party To Produce Requested Discovery Under Subpoena” (Document No. 1) and “Plaintiff’s – And Non-Party Performance Impressions, LLC’s – Motion To Transfer Venue” (Document No. 2). These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion and the record, the undersigned will grant the motion to transfer.

By the pending motion to compel, filed August 5, 2021, Defendants seek to compel non-party Performance Impressions, LLC to produce certain documents and/or appear for a deposition. (Document No. 1). Non-party Performance Impressions, LLC is a sole-member North Carolina company in Asheville (Buncombe County) owned by Plaintiff David Oppenheimer.” (Document No. 1, p. 1). The underlying Notice and Subpoena were issued by the United States District Court for the District of South Carolina (“D.S.C.”), relate to an action, Oppenheimer v. Scarafile, et al., 2:19-CV-3590-RMG (D.S.C.), pending in the Charleston Division of the D.S.C., and require production of documents in North Charleston and/or deposition testimony by a representative of Performance Impressions, LLC via Zoom. (Document Nos. 1, 1-1, 1-2)

On August 19, 2021, Plaintiff and non-party Performance Impressions, LLC filed their “...Response In Opposition to Defendants’ Motion To Compel...” (Document No. 3) and a “...Motion To Transfer Venue” (Document No. 2). Plaintiff and Performance Impressions, LLC assert that because the Subpoena was issued by the D.S.C.; the subject of the Subpoena consents to transfer; and the same or similar issues have already been presented in the underlying D.S.C. case, transfer to that court is appropriate. (Document No. 2, pp. 2-3) (citing Fed.R.Civ.P. 45(f)).

“Defendants’ Reply Indicating No Opposition To Motion To Transfer Venue” (Document No. 4) was filed on August 20, 2021. In their response/reply Defendants “pray[] this Court grant the Motion at ECF No. 2 and transfer venue for Carolina One’s Motion to Compel [ECF No. 1] to the U.S. District Court for the District of South Carolina (Charleston Division), No. 2:19-cv-03590-RMG, and for other and further relief as the Court deems just and proper.” (Document No. 4).

Based on Plaintiff and Performance Impressions, LLC’s motion to transfer, and Defendants’ recent consent, the undersigned finds good cause to transfer this matter back to the D.S.C. as agreed by the parties.

IT IS, THEREFORE, ORDERED that “Plaintiff’s – And Non-Party Performance Impressions, LLC’s – Motion To Transfer Venue” (Document No. 2) is **GRANTED**. “Defendants’ First Motion To Compel Non-Party To Produce Requested Discovery Under Subpoena” (Document No. 1) shall be **TRANSFERRED** to the United States District Court for the District of South Carolina for further consideration and disposition, and this action shall be **CLOSED**.

SO ORDERED.

Signed: August 26, 2021


 David C. Keesler
 United States Magistrate Judge

